

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs September 19, 2007

**CARLTON CLARK v. TENNESSEE BOARD OF PROBATION AND
PAROLES**

Appeal from the Chancery Court for Davidson County
No. 06-743-III Ellen Hobbs Lyle, Chancellor

No. M2006-01747-COA-R3-CV - Filed January 30, 2008

The petitioner, Carlton Clark (“Prisoner”), is serving an eight-year prison sentence for drug possession. He appeals the decision of the Tennessee Board of Probation and Paroles (“Parole Board” or “Board”) denying him parole, arguing that the Board’s decision was wrongfully based solely upon the “seriousness of [his] offense,” and further that the Board wrongfully rescheduled his next parole hearing for three years after the initial hearing, rather than one year. The state argues that the courts lack jurisdiction over Prisoner’s appeal because the initial filing, on the very expiration date of the 60-day statutory deadline, was not verified by an affidavit, and, therefore, the trial court never acquired jurisdiction and the Parole Board’s ruling became final. The trial court agreed with the state and dismissed the case with prejudice. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Affirmed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY and SHARON G. LEE, JJ., joined.

Carlton Clark, Tiptonville, Tennessee, appellant, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter, Michael E. Moore, Solicitor General, and Joshua D. Baker, Assistant Attorney General, Civil Rights and Claims Division, Office of the Attorney General, Nashville, Tennessee, for the appellee, Tennessee Board of Probation and Paroles.

OPINION

The Parole Board initially denied Prisoner parole on October 5, 2005, approximately sixteen months after his sentence began. According to Prisoner, “seriousness of offense” was the sole reason cited for the denial. In addition to denying parole, the Parole Board also deferred Prisoner’s next parole hearing for three years. Prisoner appealed this decision to the Board, and was again denied on January 24, 2006. Prisoner then filed a petition for writ of certiorari with the trial court on March

27, 2006, claiming that “merely citing ‘Seriousness of Offense’ . . . is insufficient by itself to justify or substantiate [sic] the denial of parole,” and further arguing that the Parole Board exceeded its authority by effectively denying his parole not just for one year, but for the two subsequent years as well.

Tenn. Code Ann. § 27-9-102 (2000) imposes a 60-day deadline for certiorari appeals of administrative rulings, after which the ruling becomes final. Prisoner’s application for the writ was filed exactly 60 days after the Parole Board’s denial of his initial appeal. However, Prisoner’s petition was not accompanied by a sworn affidavit. Article VI § 10 of the Tennessee Constitution and Tenn. Code Ann. § 27-8-104(a) (2000) both require that common law writs of certiorari be “supported by oath or affirmation,” and Tenn. Code Ann. § 27-8-106 (2000) states that a petition for such a writ “may be sworn to before the clerk of the circuit court, the judge, any judge of the court of general sessions, or a notary public[.]” The Supreme Court has interpreted these provisions as requiring “that the petition *must* be verified by affidavit.” *Drainage Dist. No. 4 of Madison County v. Askew*, 196 S.W. 147, 148 (Tenn. 1917) (emphasis added). “We do not acquire jurisdiction” over the case unless the petition is supported by a sworn affidavit. *Id.* See also *Hughes v. NECX Disciplinary Bd. Members*, No. E2005-01972-COA-R3-CV, 2006 WL 656789, at *2 (Tenn. Ct. App. E.S., filed March 16, 2006); *Jackson v. Tennessee Dept. of Correction*, No. W2005-02239-COA-R3-CV, 2006 WL 1491445 (Tenn. Ct. App. W.S., filed May 31, 2006).

The Parole Board filed a motion to dismiss on June 7, 2006, arguing that “[t]his Court lacks subject matter jurisdiction because the petition is not verified by a sworn affidavit[.]”¹ In response, on June 19, 2006 – 84 days after the deadline – Prisoner requested permission to amend his petition and add the required affidavit, noting the “limited amount of research materials at [his] disposal.” The court denied the motion to amend and granted the motion to dismiss. Prisoner appeals. In his brief, he does not discuss the procedural problem that resulted in the dismissal, but merely asserts that the problem has been remedied and then focuses entirely on the substance of his claim.

The trial court’s grant of a motion to dismiss presents a pure question of law, which we review *de novo* with no presumption of correctness as to the trial court’s judgment. *Stein v. Davidson Hotel Co.*, 945 S.W.2d 714, 716 (Tenn. 1997). We must “construe the complaint liberally in favor of the plaintiff, taking all allegations of fact therein as true.” *Cook v. Spinnaker’s of Rivergate, Inc.*, 878 S.W.2d 934, 938 (Tenn. 1994).

In the instant case, however, we need not – indeed cannot – reach the merits of Prisoner’s claim. As noted above, verification by affidavit is a jurisdictional requirement for a petition for a writ of certiorari. Once the statutory 60-day deadline has expired without a verified petition being filed, the court loses jurisdiction and the appealed-from ruling of the Parole Board becomes final.

¹ The Board also claimed in its motion to dismiss that the petition “does not state that it is the first application for the writ,” another requirement for certiorari petitions. This assertion was subsequently echoed in the trial court’s ruling. The Board concedes on appeal that the assertion was incorrect; the petition, though unverified, *did* state that it was the first application for the writ. Thus, the only deficiency was the absence of proper verification through a sworn affidavit. This was harmless error because the lack of a verification, without more, is an adequate ground for dismissal of the petition.

Thus, the court lacked any authority to allow Prisoner to amend his petition on June 19, 2006, nearly five months after the date of the Board's final ruling. The motion to amend was properly denied and the motion to dismiss properly granted.

It is well settled that a plaintiff's *pro se* status does not excuse him "from complying with the same applicable substantive and procedural law that represented parties must comply with." ***Bowling v. Tenn. Bd. of Paroles***, No. M2001-00138-COA-R3-CV, 2002 WL 772695, at *3 n.6 (Tenn. Ct. App. M.S., filed April 30, 2002). Nor is this a situation where either this court or the trial court could set aside the procedural rule upon a showing of good cause. "Unlike the authority of this Court to waive one of its own rules when the ends of justice seem to so require, the Court is without authority to extend its jurisdiction beyond the confines fixed by statute if constitutional objections to such confines are not present." ***Depew v. King's, Inc.***, 276 S.W.2d 728, 729 (Tenn. 1955). As in ***Depew***, the court's authority to hear this case

is predicated upon it being presented to this Court by petition for certiorari within the time fixed by the statute and also upon the requirement that such petition for certiorari shall be "a sworn petition." When either of those conditions does not exist this Court violates the mandate of the statute conferring jurisdiction if it presumes to review the judgment of the Court of Appeals.

Id.

Lacking jurisdiction, the trial court had no choice but to dismiss the case, and we are in precisely the same position. The case cannot proceed.

The trial court's dismissal of Prisoner's petition is affirmed. Costs on appeal are taxed to the appellant, Carlton Clark. This case is remanded to the trial court for collection of costs assessed below, pursuant to applicable law.

CHARLES D. SUSANO, JR., JUDGE